



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 17440614

Date: AUG. 11, 2021

Appeal of Texas Service Center Decision

Form I-140, Immigrant Petition for Alien Worker (Advanced Degree, Exceptional Ability, National Interest Waiver)

The Petitioner, an accountant, seeks second preference immigrant classification as an individual of exceptional ability, as well as a national interest waiver of the job offer requirement attached to this EB-2 classification. *See* Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2).

The Director of the Texas Service Center denied the petition, concluding that the Petitioner did not establish that she is an individual of exceptional ability. The Director also concluded that the Petitioner did not establish that a waiver of the required job offer, and thus of the labor certification, would be in the national interest.

In these proceedings, it is the Petitioner's burden to establish eligibility for the requested benefit. Section 291 of the Act, 8 U.S.C. § 1361. Upon *de novo* review, we will dismiss the appeal.

I. LAW

To establish eligibility for a national interest waiver, a petitioner must first demonstrate qualification for the underlying EB-2 visa classification, as either an advanced degree professional or an individual of exceptional ability in the sciences arts or business. Because this classification requires that the individual's services be sought by a U.S. employer, a separate showing is required to establish that a waiver of the job offer requirement is in the national interest.

Section 203(b) of the Act sets out this sequential framework:

- (2) Aliens who are members of the professions holding advanced degrees or aliens of exceptional ability. –
 - (A) In general. – Visas shall be made available . . . to qualified immigrants who are members of the professions holding advanced degrees or their equivalent or who because of their exceptional ability in the sciences, arts, or business, will substantially benefit prospectively the national

economy, cultural or educational interests, or welfare of the United States, and whose services in the sciences, arts, professions, or business are sought by an employer in the United States.

(B) Waiver of job offer –

- (i) National interest waiver. . . . the Attorney General may, when the Attorney General deems it to be in the national interest, waive the requirements of subparagraph (A) that an alien's services in the sciences, arts, professions, or business be sought by an employer in the United States.

For the purpose of determining eligibility under section 203(b)(2)(A) of the Act, “exceptional ability” is defined as “a degree of expertise significantly above that ordinarily encountered in the sciences, arts, or business.” 8 C.F.R. § 204.5(k)(2). The regulations further provide six criteria, at least three of which must be satisfied, for an individual to establish exceptional ability:

- (A) An official academic record showing that the alien has a degree, diploma, certificate, or similar award from a college, university, school, or other institution of learning relating to the area of exceptional ability;
- (B) Evidence in the form of letter(s) from current or former employer(s) showing that the alien has at least ten years of full-time experience in the occupation for which he or she is being sought;
- (C) A license to practice the profession or certification for a particular profession or occupation;
- (D) Evidence that the alien has commanded a salary, or other remuneration for services, which demonstrates exceptional ability;
- (E) Evidence of membership in professional associations; or
- (F) Evidence of recognition for achievements and significant contributions to the industry or field by peers, governmental entities, or professional or business organizations.

8 C.F.R. § 204.5(k)(3)(ii).

In determining whether an individual has exceptional ability under section 203(b)(2)(A) of the Act, the possession of a degree, diploma, certificate, or similar award from a college, university, school or other institution of learning or a license to practice or certification for a particular profession or occupation shall not by itself be considered sufficient evidence of such exceptional ability. Section 203(b)(2)(C) of the Act.

Where a petitioner meets these initial evidence requirements, we then consider the totality of the material provided in a final merits determination and assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011). This two-step analysis is consistent with our holding that the “truth is to be determined not by the quantity of evidence alone but by its quality,” as well as the principle that we examine “each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.” *Matter of Chawathe*, 25 I&N Dec. 369, 376 (AAO 2010).

II. ANALYSIS

The Director found that the Petitioner did not establish she is an individual of exceptional ability. The Petitioner does not assert that she qualifies for second-preference employment as a member of the professions holding an advanced degree. If the Petitioner does not establish eligibility as an individual of exceptional ability, we need not determine whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act. For the reasons discussed below, the Petitioner did not establish that she is an individual of exceptional ability.

The Director concluded that the Petitioner satisfied the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(A), but the Director found that the Petitioner did not satisfy at least two of the five other criteria. On appeal, the Petitioner reasserts eligibility under 8 C.F.R. §§ 204.5(k)(3)(ii)(C) and (E), in addition to the criterion the Director concluded the Petitioner satisfied.

The criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C) requires evidence of “[a] license to practice the profession or certification for a particular profession or occupation.” On appeal, the Petitioner asserts that the Director “failed to recognize . . . the [d]egree of ‘Licentiate in Public Accounting’ from the [redacted] University [conferred to the Petitioner] . . . as dually functioning as a license, as the name of her degree implies.” In support of this statement, the Petitioner submits the Merriam-Webster’s Dictionary definition of the word “licentiate,” “a person who has a license granted especially by a university to practice a profession.” However, the record does not contain documentary evidence that an academic degree of “Licentiate in Public Accounting” issued by [redacted] University is legally recognized as a license to practice accounting, either in Venezuela or—more importantly—in the Commonwealth of Virginia, where the Petitioner resides and works.¹ Petitioners bear the burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361; *Matter of Skirball Cultural Ctr.*, 25 I&N Dec. 799, 806 (AAO 2012). Without more probative evidence than the Merriam-Webster’s Dictionary definition, we are unpersuaded that the implications of the word

¹ *See, e.g.,* Angela M. Lyons, *Public Practice of Accounting in the United States of Venezuela*, Prepared for American Institute of Accountants, https://egrove.olemiss.edu/cgi/viewcontent.cgi?article=2779&context=dl_hs (last visited Aug. 11, 2021) (stating, “[p]ublic accounting is unrestricted in Venezuela at the present time and anyone is free to engage in practice. There is no requirement that public accountants must be registered.”). Although “university graduates with degrees of Licentiate and Doctor in Economic Sciences may engage in public practice” of accounting in Venezuela, “[g]raduates of secondary schools, between the ages of 18 and 20, holding diplomas in accounting” also may do so. *Id.*

“licentiate” in the Petitioner’s foreign degree title satisfies the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(C).

The only other remaining criterion under which the Petitioner asserts eligibility on appeal is 8 C.F.R. § 204.5(k)(3)(ii)(E), which requires “[e]vidence of membership in professional associations.” On appeal, the Petitioner asserts that “by virtue of [the Petitioner’s] Licentiate in Accounting, she became a member of . . . El Colegio De Contadores Publicos ‘FCCPV.’” The Petitioner references general information about the FCCPV submitted in response to the Director’s RFE, and submits new information about the FCCPV and documents indicating the Petitioner is recognized as a member of the FCCPV.

In addition to the information in the record, including the evidence submitted on appeal, we note that the FCCPV is recognized as a professional accounting organization.² However, the evidence of membership the Petitioner submitted recognizes her “attendance as a participant in the ‘professional orientation days’ [d]ictated at the headquarters of the College of Public Accountants of the State of [REDACTED] in October 2019, after the petition filing date, and acknowledges the FCCPV’s receipt of various support fees from the Petitioner in January 2021. Organizational information about the FCCPV in the record asserts that it:

will be constituted by the delegates elected in the Colleges of the respective federal entities, by the main members of the Board, by the President, Secretary and member of the National Disciplinary Tribunal, by the National Comptroller and National Subcontractors, the National Prosecutor, by the Permanent Secretary, by the Presidents, by the Board of Directors and the main members of the Board of Directors of the College that is the seat of the Assembly.

The record does not establish that the Petitioner became a member of the FCCPV automatically “by virtue of her Licentiate in Accounting,” as she asserts, or that she was a member of the FCCPV as of the petition filing date. Rather, the record establishes that the Petitioner was recognized as an FCCPV member in October 2019 and January 2021. A petitioner must establish eligibility at the time of filing the nonimmigrant visa petition and must continue to be eligible for the benefit through adjudication. 8 C.F.R. § 103.2(b)(1). A visa petition may not be approved at a future date after a petitioner becomes eligible under a new set of facts. *See Matter of Michelin Tire Corp.*, 17 I&N Dec. 248, 249 (Reg’l Comm’r 1978). Accordingly, although the FCCPV is the type of professional association contemplated by 8 C.F.R. § 204.5(k)(3)(ii)(E), the record does not establish the Petitioner’s membership in the FCCPV as of the petition filing date, and therefore does not satisfy the criterion at 8 C.F.R. § 204.5(k)(3)(ii)(E).

In summation, the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), and therefore has not established she is an individual of exceptional ability. Because the Petitioner did not establish eligibility as an individual of exceptional ability, we need not address the Petitioner’s assertions on appeal regarding whether a waiver of the job offer requirement, and thus of a labor certification, would be in the national interest. *See* section 203(b)(2) of the Act.

² *See, e.g.,* International Accounting Standards Plus, *Venezuela*, <https://www.iasplus.com/en/jurisdictions/americas/venezuela/> (last visited Aug. 11, 2021) (describing FCCPV as “the professional accountancy organisation in Venezuela”).

III. CONCLUSION

As the Petitioner has not satisfied at least three of the six criteria at 8 C.F.R. § 204.5(k)(3)(ii), we conclude that the Petitioner has not established that she is an individual of exceptional ability.

ORDER: The appeal is dismissed.